1945 **K** **File No.** O. Leases | 45

Legal Dept.

A **BRANCH**

Subject:— Opinions in Connection

with the Leases

P/12/50

File No. O Leases | 45

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C O N T E N T S.

Legal Department File No;O.Leases /45.

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Office of the R.L. A.

Two questions have been referred to R.L.A. for opinion. They are (1) whether the installation of a printing press is at variance with the permitted user of the Back Bay Reclamation plots; and (2) whether Mr.Trotman's oral assurance would change the legal aspect of the case and would Mr.Hamilton have any claim against Government if user for this purpose is specifically prohibited by Government at this stage.

2. "Commercial" is not a word of definite meaning. It usually has reference to the selling of goods and not to their manufacture or to the dealings of merchants and traders rather than the business of manufacturers. Rule 1(a) of the Building Rules for Block I and II of the Back Bay Reclamation Scheme must be taken to exclude factories. A printing press is more akin to a factory than to a building used for commercial purposes. I think that a printing press would not come within rule 1(a). This view gains some support from clause (p) of the form of Lease. There the other commercial purposes are specifically limited to those similar to shops, show-rooms offices, hotels and places of amusements. It seems clear that the use of a building for a printing press is not similar to the use of a building for a shop, show-room or offices.

3. The second question is whether Mr.Hamilton has bought the plot on the understanding that he would be allowed to erect a printing press, and if so what legal rights has he. He made it clear enough that he was going to erect a press. That is implicit in his first letter. Further he obtained some assurance from Mr.Trotaman that he would be allowed to use the plot for that purpose although the nature of the assurance is not so clear as it might be. In these circumstances Mr.Hamilton is perhaps entitled to have his monery returned if he is not allowed to build a press. but legally he is not entitled to anything more. There can be no doubt that from the purely legal point of view, Mr. Hamilton's verbal assurance would be entirely irrelevant.

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also, would be the statements, contained in his letters prior to the signing of the proposal form, explaining the reasons why he proposed to purchase the plot. In Mr.Hamilton's letter dated 2nd November,1943 while forwarding to the Collector the proposal from he stated that clause (p) of the form of lease seemed to him "very ambiguous" and he accordingly requested for a clarification as to the ~~construction~~ construction of the clause. In reply to this the Collector by his letter dated 5th November 1943 informed him in very definite and unambiguous terms that "non-residential user and shops would be allowed on the eastern frontage of the plot. The rest of the plot should be used for residential purposes only". Long after the date of this letter Govern ent's terms for grant of the lease were intimated to Mr.Hamilton by the Collector on 15thFebruary 1944 and in spite of the Collector's explanation in the latter dated 5th November Mr.Hamilton signified his acceptance of the Government's terms. Under the circumstances I do not think Mr.Hamilton can very well complain that he accepted Government's terms for the grant of a lease on Mr.Trotmans assurance that the premises would be allowed to be used for a printing press.

4. Whether on grounds other than legal Mr.Hamilton has a good case for special permission being granted to erect a press is a question with which the Legal Departemtn is not concerned. That aspect of the case is dealt with in A(R)'snote of 24-11

Sd/P.N.M.3/3/45.

Remembrancer of Legal Affairs.

EKN.10/7/ U.R. to R.D.No.1746,dated the 5th March 1945.

Letter.

No.3581.
Office of the R.L.A.,
Bombay Castle 7th May 1945.

To
The Director,
D.D.Chawls.

Subject:- Legal Assistance to the Manager, D.D. Chawls in Case No.59/S of 1944 at Bhoiwada Court, Dadar.

With reference to your letter No.IHS/362, dated the 20th March 1945, on the above subject, I have the honour to state as follows:-

There can be no ejectment of a tenant except by process of the courts or by statutory authority. A term for summary eviction cannot therefore be included in the lease. Governme legislation restricting rent and preventing termination of leases do not bind the Crown and will not apply to Government property unless such application is expressly prov -ed for in the Act or Order. How to get ride of undesirable to ants otherwise than by approaching the courts is mainly a d administrative problem.

Sd/P.N.M

Remembrancer of Legal Affairs.

EKH.10/7/

No.S.III/63-D

Poona, 21st June,1945.

From

The Director of Public Instruction,
Poona.

To

The Secretary to Government,
Educational Department, Bombay.

Subject:-Urdu Training College for Men,Poona.
Leasing of a private building for—

Sir,

I have the honour to invite a reference to the correspondence ending with this office letter No.S-III/63 - D dated 20th March,1945, on the subject mentioned above and to say that the period of the present lease of the premises of the Urdu Training College for Men,Poona, and the hostel attached to it expired ~~expix~~ on 31st May,1945, and that, in the circumstances already explained by me in this connection, it will be necessary to continue occupation of the premises until such time as new building is constructed for the hostel by Mr.F.D.Padamji. As Government are aware there is no suitable accomodation available on rent for this purpose. The question of relaxing the conditions of the ~~xxix~~ Building Control Order and of granting a special permit to Mr.F.D.Padamji to enable him to commence the construction of the new building for the hostel thus requires immediate attention and I request that Government be pleased to issue the requisite orders.

2. In the meanwhile, Mr. Sathe, the present owner of the property, has again written to the Head Master of the College asking him to vacate the premises as soon as possible. He has, besides, refused to carry out this year even the very necessary current repairs to the building on the ground that the entire lay-out of the premises requires remodelling and it would be a waste to spend on current repairs. It is also reported that Mr.Sathe has started constructing quarters for his servants in the open compound of the hostel, without giving any notice of his intention to do so either to the Head Master or to the Educational Inspector. In this connection I enclose copies of the Educational Inspector,C.D.'s No. S-16-S of 29th May,1945,and 11th June,1945, and accopaniment as well as of his No.S-16-S of 14th June,1945. It would appear that Mr.Sathe is taking the law into his own hands, and is as good as making a forcible entry into the premises which have never been handed over to him. I agree with the Educational Inspector that this is very undesirable and request that Government be pleased to take the necessary action to restrain Mr.Sathe from his present proceedings.

Your Obedient Servant,

Sd/

For Director of Public Instruction.

EKN.10/7/

Office of the R.L.A.

The lease having expired Government is now in the position of a tenant at sufferance who is no better than a mere trespasser. It is true that Government can maintain possession until evicted by due process of law. It is equally true that the landlord's reentry and construction of structure on a part of the demised premises would amount to a dispossession otherwise than in due course of Law. But action against the landlord for dispossession otherwise than in due course of law in undesirable and inadvisable. Government should therefore negotiate a fresh lease failing which it is desirable that Government should vacate the premises as early as possible.

Sd/P.N.M.

Remembrancer of Legal Affairs.

U.R. to E.D.No.5392,dated the 21st July,1945.

EKH 10/7/

Office of the R.L.A.

It is true that in the absence of any lease it would ordinarily have been competent for Government to resume possession of the unused portion of the Catholic Gymkhana without six months' notice; but it appears from the preamble of the Government Resolution (R.D.) No.4339/33 dated the 11th December 1939 that the present legal position of the Gymkhana is that of a tenant-at-will. It is therefore necessary for Government to terminate the lease by 15 days' notice before resuming possession of the land.

Sd/P.N.M.

Remembrancer of Legal Affairs.

U.R. to R.O.No.7201, dated the 29th September 1945.

EKN.10/7/

Office of the R.L.A.

On 30th October 1941, Messrs.Oakley Duncan & Co.Ltd. applied to the Collector of Dharwar for a mining lease for gold in respect of an area of 122 acres and 30 gunthas comprising S.Nos.41/1, and 2,45,46,47,48 (A &B) of Hosur, taluka Gadag, District Dharwar, with a Certificate of Approval for Bombay Presidency. The Commissioner, S.D.first recommended the grant of a lease to the firm on certain conditions. On 20th October 1944 another firm Messrs.Pacific Minerals Ltd., Calcutta, applied for a mining lease for gold for the same area but the application was not in conformity with the provisions of rule 34 of the Bombay Mining Concessions Rules,1941, nor was it accompanied by a Certificate of Approval as required by rule 38 of the said rules. The Commissioner in paras. 4 and 5 of his indorsement dated the 16th November 1944 pointed out that according to rule 55 of the Mines Manual the prior right to the lease would be that of Messrs. Oakley Duncan & Co. as they were the first to apply for the lease but for the reasons stated therein he recommended Messrs. Pacific Minerals Ltd. for the grant of the lease. Accordingly Government sanctioned by G.R.R.D.No.185/45, dated the 15th May 1945 the grant of a mining lease to Messrs.Pacific Minerals & Co. On 14th February 1945, Government granted a Certificate of Approval to this firm. Messrs.Oakley Duncan & Co., for the reasons explained in their representations dated 9th and 26th July and 1st August 1945, request Government to revise the orders sanctioning the lease to Messrs. Pacific Minerals & Co. and grant the lease in their favour on the ground that they had a prior right to a lease under rule 38. On further representation, Government informed Messrs Pacific Minerals & Co., by a telegram

that.....

that the orders issued in G.R.R.D.No 185/45,dated the 15 May 1945 are cancelled. A(R) considers that rule 12 is absolute and the Collector should not have entertained the C mpany's application without a Certificate of Approval, that there must be normally strong reasons to depart from the provisions of rule 38. The R.L.A. is requested to advise whether Government can now cancel the G.I.R.D.No.185/45,dated the 15th May 1945.

It is true that rule 12 of the Bombay Mining Concessions Rules,1941, is mandatory and the Collector should not have entertained the application of Messrs Pacific Mining Concessions Rules appear to be non-statutory and consequently it would difficult to maintain that the G.R.(R.D.) No.185.45, dated 15th May 1945 should, for th breach of rule 12 be cancelled, particularly when Government has since granted the Co-pmay a certificate of approval. There is, however, no legal objection to Government cancelling the G.R.(R.D.)No.185/45, dated 15th May, 1945, which, in the absence of any lease, constitutes no concluded agreement (see section 175(3) of the Government of India Act/1935)

Sd/P.M.M.

Remembrancer of Legal A fairs.

U.R. to R.D.,No.7959, dated 19th October 1945.

EXH.11/7/

Office of the R.L.A.

The question of terminating the lease of 1851 at page 11 ante was raised for the first time by the Collector of Bombay in 1942 and the Solicitor to Government in the Legal Department who was consulted advised that the constuction of sheds and a Dhobi Ghat without the sanction of Government may not be xtreated as a breach as the Lessee was under an impression that the land was freehold and in any case Government would be deemed to have waived this breach. Consequently Government decided to terminate the lease by six months' notic and requested the Solicitor to Government in the Legal Department to prepare a notice accordingly. That notice as provided in the lease was published in the Bombay Government Gazette in 1944. Considering that the matter was of great importance and might lead to litigation the Solicitors to the Government of Bombay were consulted. On the facts stated by the Solicitors to Government at page 91 ante the Advocate General opined on 7-6-1945 at page 89 ante thus:-

"In my opinion Government could still exercise all their rights the lessors under the lease and determine the lease the 6 months notice subject of course to payment of compensation for the buildings mentioned in the lease. As to arrears of rent the position is little doubtful, but on the whole I am inclined to think that the right to recover them is not lost. See Norwanji M. Cama vs. The Secretary of State- 14 B.L.R. page 654 where it was held that no statemer as to tenure of land by the Collector could bind Government and that a statement by the Collector in exercise of his statutory duties cannot create an estoppel against Governme The statement in the ecord that the rent is written off do not estop Government from claiming the rent."

Messrs.Craford Biley & Company,Solicitors for the Lesse have written to the Collectors as follows:-

"It is not possible for our clinet to surrender vacant possession of the premises to Government pursuant to the notice. But in view particularly of the nature of the business carried on by the said lessee, our client takes it that it is not the intention of Government to eject the sa lessee from the said premises. Our client therefore is

prepared.....

prepared to arrange for the lessee to attorn tenant to Government under the said lease provided Government will accept the same as sufficient and complete compliance by our client of the requisitions in the said notice dated the 5-1-1944.....On resumption of the premises as suggested above, our client will therefore be entitled to the said compensation as the assignee of the lessee under the said lease of 15-1-1851 and unless the amount of such compensation is agreed to between Government and our client it will require to be referred to arbitration in the manner provided in the lease of 1851 as aforesaid. The ascertainment of the amount of compensation by arbitration is likely to take considerable time and in the meanwhile our client will lose the rent of Rs.475/- p.m. which she would have otherwise received from the present tenant. Our client would therefore suggest that pending such ascertainment our client should be paid sums equivalent to the said rent as and when the rent accrues due to Government by the present lessee, such sums to be eventually taken into account in ascertaining the amount of compensation."

In para 2 of the office note at page 97 ante Revenue Department observes:-

"The Collector now states that M/s.Crafford Bayley and Co. have informed him that their client Mrs.Sharadabai would be willing to hand over possession of the property if she is paid compensation for the structure on the land erected by her and also monthly rent of Rs.475/- till the compensation is settled and paid. As the structures were erected without the permission of Government Mrs.Sharadabai is not entitled to compensation nor can she claim rent from Government when she ought to have delivered up possession of the land to Government. The Collector may be asked to inform her through her Attorneys that she is not entitled to any compensation for the structures put up by her and that her claim for rent is also inadmissible. She may also be informed that she is liable for the arrears of rent at the rate of Rs.22-4-0 per annum from the year 1880, and the usual notice of demand served on her."

The R.L.A. is requested to advise whether the action proposed by Revenue Department is in order.

2. One of the conditions of the lease of 1851 at page 11 ante provides.

"During the continuance of this demise no builings or erections permanent or temporary shall be erected on the said ground hereby demised or on the said pier other than those hereinbefore specified without the the sanction of Bombay Government being previously obtained."

The proviso thereto provides:

"It is hereby covenanted by an between the said parties hereto convenating as aforesaid and the demise hereby made is upon this condition that it shall be lawful at any time for the said Company upon given six calendar months previous notice in the Bombay Government Gazette to put an end to this demise and thereupon to enter into and take possession of the land or ground hereby demised with all erections buildings and improvements thereon or such of the same as shall not previously have been made over to the Bombay Government as here-in-before provided that the said Company shall not and will after they have so taken possession of the same

pay.. .....

pay to the said James Remington Hadow, Cursetjee Jamsetjee and Bomon jee Hormusji their executors administrators and assigns such a sum of money as compensation for the said pierchan el and all such other works as they they said James Remington Hadow, Cursetjee Jamsetjiee and Bomonjee Hormusji their executors administrators and assigns shall have erected on the land hereby demised as shall be agreed upon between the Bombay Government and the said James Remington Hadow, Cursetjee Jamsetjee and Bomonjee Hormusjee their executors adminic rators and assings and if they xii shall dicagree about the same then as two arbitrators one to be appointed by the said Company and other by the said James Remington Hadeow, Curretjee Jamestjee and Bomanjee Hormusjee their executors administrator or assigns or any empire to be appointed by such arbi rators etc."

Another condition in the lessee provies:

" If the said James Remington Hadow, Cursetjee Jamestee and Bomonjee Hormusjee their executors administrators and assigns shall at any time make default in payment of the rent hereinbefore reserved or in performance of any of the convenants herein contained and which on their parts ought to be performed it shall be lawful for the said company into and upon the said premises hereby demised to enter and the same to have again repossess and enjoy as if this demise had not been made without the said James Remington Hadow, Cursetjee Jamestjee and Bomjee Hormusjee their executors administrators and assigns being entitled to make any claim for compen ation."

3. It is true that some sheds and a Dhobi Ghat have been constructed by the lessee without the previous sanction of Government and consequently Government would have been entitle to cancel the lease and to re-enter upon the premises without being liable to pay any compensation to the Lessee. However, it appears that Government did not elect to exercise this right and gave a six months' notice terminating the lease as provided in the deed of 1851 as if the sheds and the Dhobi Ghat were constructed with the previous sanction of Governmen Consequently it appears that it would not now be open to Government to terminate the lease for the breach of the term of the lesse. Government will have therefore to pay compensation to the lessee.

The liability to pay compensation arises only when Government takes possession of the premises. The lease does not provide for payment of any rent till compensation is determined. Consequently the claim of the lessee for rent of Rs.475/-till the compensation is settled and paid would not be tenable.

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The Advocate General has already advised that the claim for arrears of rent would be tenable. The lessee may therefore be informed that she would be liable to pay the arrears of rent at the rate of Rs.22-/-0 per annum for the last 60 years.

Sd/P.F.M.

Remembrancer of Legal Affairs.

U.R. to R.D.No.8366, dated the 28th November 1945.

MKN.11/7/